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**IN THE
COURT OF APPEALS OF INDIANA**

JEFFREY CARVER,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 55A04-0602-CR-88
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MORGAN SUPERIOR COURT
The Honorable G. Thomas Gray, Judge
Cause No. 55D01-0406-FB-147

October 18, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Chief Judge

After a jury trial, Jeffrey Carver was convicted of sexual misconduct with a minor¹ as a Class B felony. He appeals raising the following issue: whether there was sufficient evidence to support the jury's finding that he had sexual relations with a minor.

We affirm.

FACTS AND PROCEDURAL HISTORY

On April 10, 2004, fourteen-year-old B.R.² and her friend, S.J., went to a party at D.E.'s house. Carver, who was twenty-three years old, and S.J.'s boyfriend, J.D., were also at the party. While B.R. was having an alcoholic drink, Carver offered B.R. and S.J., some Ativan pills, which they consumed. Carver and B.R. began kissing about fifteen minutes after B.R. took the pills. A few moments later, S.J., J.D., and D.E., left the house to pick up some friends, while B.R. and Carver remained at the residence.

Carver helped an intoxicated B.R. walk into the bedroom and then shut the door behind them. When the two emerged from the bedroom. D.E. noticed B.R. was crying. D.E. asked her what was wrong, and she said that she and Carver had sex and that she "was telling him to get off and he wouldn't get off." *Tr.* at 396-97. Carver told D.E. and several others that he had sex with B.R. and that she told him it was "the best she ever had." *Id.* at 374-75.

B.R. called S.J.'s mother to pick them up. S.J.'s mother arrived around 4:00 a.m. and noticed that the girls had vomit on themselves. B.R. went home, put on her pajamas, and went to sleep. The next day, B.R.'s mother noticed hickeys on B.R.'s neck. After calling S.J.'s mother and the Morgan County Sheriff's Department, B.R.'s mother took her to the emergency room where B.R. was

¹ See IC 35-42-4-9.

examined. Hospital staff determined that B.R. had hickeys on her neck, four fresh lacerations in and around her vagina, and benzodiazepine, commonly found in Xanax, Ativan, and Valium, and cannabinoids in her system. B.R.'s mother brought in the clothes B.R. was wearing at the party and the pajamas she wore after for analysis. Forensics determined that B.R.'s underpants contained seminal material that was later determined to contain Carver's DNA.

On June 7, 2005, the State charged Carver with rape, a Class B felony, and sexual misconduct with a minor, a Class B felony. On November 29, 2005, a jury found Carver guilty of sexual misconduct with a minor and not guilty of rape. Carver now appeals.

DISCUSSION AND DECISION

Carver contends that the State submitted insufficient evidence for the jury to conclude beyond a reasonable doubt that he had sexual intercourse with B.R. Specifically, Carver claims that there was no evidence that B.R. had sex with anyone on the night of April 10, 2004, and the only way the jury could reach that conclusion was by using inferences based on speculation or conjecture. When reviewing sufficiency of the evidence claims, this court does not reweigh the evidence or assess the credibility of witnesses. *Ware v. State*, 816 N.E.2d 1167, 1173 (Ind. Ct. App. 2004) (citing *Causey v. State*, 808 N.E.2d 139, 143 (Ind. Ct. App. 2004)). Instead, we consider only the evidence most favorable to the verdict, together with all reasonable and logical inferences to be drawn therefrom. *Id.* The jury's verdict will not be disturbed if there is substantial evidence of probative value supporting the conviction. *Id.*

² Although Carver's brief uses the full names of the juvenile victim and the juvenile witnesses, we choose to follow our policy of referring to minors by their initials. *Franklin v. Benock*, 722 N.E.2d 874, 881 n.2 (Ind. Ct. App. 2000), *trans. denied*. In light of the recent publication of briefs, we urge counsel to use initials in future briefs of this nature.

In order for Carver to be convicted of sexual misconduct with a minor as a Class B felony the State was required to prove that: (1) Carver was at least twenty-one years old at the time; (2) B.R. was at least fourteen years old but less than sixteen years old at the time; and (3) Carver performed sexual intercourse with B.R. IC 35-42-4-9(a)(1). Carver challenges this third element, claiming that the only evidence to prove that there was any sexual activity was D.E.'s testimony that B.R. came out of the bedroom crying and told him that Carver would not get off of her. We disagree.

D.E. also testified that B.R. told him Carver and she had sex. Carver made a statement against his own interests in telling D.E. and several others that he had sex with B.R. on the night in question and that she said "he was the best sex she ever had." *Tr.* at 374-75. Further, there was DNA evidence recovered from B.R.'s underpants that forensics later determined to be Carver's DNA. *Tr.* at 299-300; *See C.L.Y. v. State*, 816 N.E.2d 894, 904 (Ind. Ct. App. 2004) (DNA profile obtained from location described by victim matched defendant to reasonable degree of scientific certainty and was sufficient evidence to prove beyond reasonable doubt that defendant committed act). Additionally, the medical evidence confirmed that B.R. had hickeys on her neck and four lacerations and some redness in and around her vagina that is indicative of blunt force trauma. The examination revealed that a recent event caused the lacerations. We conclude that evidence of probative value existed from which the jury could have found that Carver was guilty beyond a reasonable doubt of sexual misconduct with a minor as a Class B felony. *See Edwards v. State*, 807 N.E.2d 742, 748 (Ind. Ct. App. 2004).

Affirmed.

SHARPNACK, J., and MATHIAS, J., concur.